IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.8983 of 1991

Date of Decision: October , 2007

Ashok Kumar .....Petitioner

Versus

The Central Bank of India & others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.NS Bawa, Advocate for the petitioners.

Mr.AP Jagga, Advocate with
Mr.Aalok Jagga, Advocate for the respondents.

S. D. ANAND, J.

1. Conceded facts in the first instance. The petitioner was in employment of the respondents. He was prosecuted on a charge of defalcation of certain amount by unauthorisedly withdrawing the same from the accounts of indicated account holders. He was acquitted by the criminal Court on 15.7.1983 (Annexure P2). He had earlier been placed under suspension on 22.11.1978. An appeal against acquittal, preferred by the State, was declined by this Court on 27.5.1991. However, in the meantime, the respondents decided to initiate departmental proceedings against him in the year 1990 (to be exact, the charge sheet is dated 16.5.1990 – Annexure R1).

2. The petitioner filed the present writ petition to challenge the initiation of departmental proceedings after inordinate delay, particularly

after the verdict of acquittal in his favour on 15.7.1983, on the very charges he had been exonerated.

3. The respondents resisted the petition by challenging its maintainability itself in view of the fact that an equally efficacious remedy is available to him under the Industrial Disputes Act. It is re-iterated that the petitioner is estopped from resisting the holding of an enquiry as he did not raise any objection to the participation in the course thereof. It was also averred that the verdict of acquittal has no bearing on the competence of the domestic enquiry.

4. I have heard Mr.NS Bawa, learned counsel for the petitioner and Mr.AP Jagga, learned counsel for the respondents and have carefully gone through the records.

5. Learned counsel for the respondents argued, at the very outset, that the present writ petition is not maintainable at all in view of the fact that an equally efficacious remedy is available to the petitioner under the Industrial Disputes Act.

6. The plea merely deserves to be noticed to be negatived as it (plea) is not in accord with the law laid down by a Full Bench of this Court in **Manohar Lal Vs. State of Punjab through the Secretary, P.W.D. (P.H.), Punjab, Chandigarh and another**, 1983 PLR 666. It was held in the course of that judgment that the availability of an equally efficacious/alternative remedy would not ordinarily be a bar to the filing of the writ petition. Even otherwise, the advocated plea is bereft of merit because no provision of Industrial Disputes Act would authorise the grant of the relief which the petitioner sought in this writ petition.

7. In support of the plea that the holding of a domestic enquiry is

unaffected by the finding of acquittal, the learned counsel for the respondents relied upon **Commissioner of Police, New Delhi Vs. Narender Singh,** (2006) SCC 265, **Union of India and another Vs. Bihari Lal Sidhana**, 1997(4) SCC 385 and **Uttaranchal Road Transport Corpn. and others, Vs. Mansaram Nainwal**, 2006(6) SCC 366.

8. Though the proposition of law laid down by the Apex Court in the rulings aforementioned is apparent, it requires notice that even in those cases, the Apex Court stressed that the acquittal of an employee at a criminal trial would not automatically affect the maintainability of the domestic enquiry. Each case would, thus, depend upon its own facts and circumstances.

9. In the present case, the petitioner was acquitted on 15.7.1983. He had already been placed under suspension w.e.f. 22.11.1978. It follows therefrom that the petitioner was under a departmental cloud with effect from the year 1978 itself. Inspite thereof, the respondents did not initiate any domestic enquiry against him till the year 1990. As already noticed in an earlier part of this judgment, the charge sheet served upon the petitioner for the first time is dated 16.5.1990 – Annexure R1.

10. Faced with the predicament noticed above, the learned counsel for the respondents tried to wriggle out by arguing that the respondents were awaiting the result of the appeal against acquittal.

11. The learned counsel is not on a firmer footing when he so argues. It may be noticed in the context that the appeal against acquittal was preferred by the State of Punjab in the year 1984. That appeal came to be dismissed on 27.5.1991. If the respondents wanted to await the outcome of the appeal against acquittal, they ought to have come into action only on

the dismissal of the appeal on 27.5.1991. It is not to suggest that the respondents were duty bound to await the outcome of the appeal against acquittal. I have noticed that fact in order to falsify the advocated reasoning that the respondents wanted to await the outcome of the appeal against acquittal.

12. It was, then, argued by the learned counsel for the respondents that the terms of first bipartite settlement enable the Management to proceed against an employee even if the latter is acquitted of the charge.

13. Be that as it may, the Competent Authority amongst the respondents was required to take a conscious decision to hold a domestic enquiry against the petitioner. No such conscious decision is even averred to have been taken by the Competent Authority.

14. Learned counsel appearing on behalf of the respondents, then, argued that the petitioner cannot avail of the finding of acquittal to defeat the holding of domestic enquiry in view of the fact that he had been acquitted on a technical ground. It was further argued in the context that the learned Trial Court had, in the light of the incriminating material against the petitioner, ordered the refund of the defalcated amount to the account holders. It was further argued that there was evidence at the time of trial that the defalcated amount had been recovered from the petitioner.

15. The plea aforementioned proceeds on a false premise. As would be evident from Annexure P2, the recovery of defalcated amount had been got effected by Ashok Kumar (a co-accused) in pursuance of a disclosure statement made by him. Further, it was aforesaid Ashok Kumar only who was averred to have made an extra-judicial confession. Insofar as the petitioner is concerned, he earned a verdict of plain acquittal and there is

no material on the file to justify the view advocated on behalf of the respondents that the petitioner had been acquitted on a technical ground.

16. It is, thus, apparent that the respondents, in their administrative discretion, did not proceed in the matter of holding of a domestic enquiry against the petitioner till the year 1990 inspite of the fact that the petitioner had been placed under suspension (on the relevant allegation) in the year 1978 and he came to earn an absolute plain acquittal on 15.7.1983. The Competent Authority is not proved to have taken a conscious decision at any stage to proceed against the petitioner in the domestic enquiry with effect from a particular date. Though the competence of the Competent Authority to hold a domestic enquiry against an employee facing prosecution on a similar charge cannot be questioned, the decision in the context has to be a conscious affair. It is only a conscious decision which would enable the Competent Authority to assert the validity of simultaneous domestic proceedings along with the trial. In the present case, the delay of about twelve years is plainly inordinate and unexplained and the initiation of the departmental proceedings is not proved to have been preceded by a conscious decision of the Competent Authority.

17. In the facts and circumstances of the present case, the reliance placed by the learned counsel for the respondents upon the rulings (noticed in para 7 of this judgment) would appear to be mis-conceived.

18. In the light of foregoing discussion, the present petition shall stand allowed. The enquiry proceedings shall stand quashed. If the petitioner has not attained the age of superannuation, he shall be re-instated forthwith. He shall also be entitled to all the consequential benefits relatable to re-instatement. If he has retired from service, he would

obviously be entitled to only the consequential benefits.

(S. D. ANAND)
October , 2007 **JUDGE**
SRM

Note: Whether referred to reporter ? Yes/No